IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 3205 of 2005

Sshish Shantaram Bhosale. ... Applicant.
Versus.
The State of Maharashtra. ... Respondent.

ALONGWITH

CRIMINAL APPLICATION NO. 3206 OF 2005

Darshan Harish Joshi. ... Applicant.
Versus.
The State of Maharashtra. ... Respondent.

Shri B.D.Joshi for the Applicants in both the Applications.

Shri R.Y.Mirza, A.P.P. for the Respondent-State in both the Applications.

CORAM : ABHAY S. OKA, J.

DATED : 7th June, 2005.

P.C.:

1. These two Applications for grant of anticipatory bail can be disposed of by a common order as both the Applicants are allegedly involved in commission of the same alleged offence. The Applicant in Criminal Application No.3205 of 2005 is one Ashish and the Applicant in Criminal Application No.3206 of 2005 is one Darshan. A case has been registered against both the Applicants for commission offence punishable under sections 170, 39, 394 read with section 34 of the Indian Penal Code. The allegation against the Applicants is that the Applicants entered the factory premises of Bhagyalaxmi Petrochemical Pvt.Ltd. at Sudumbare, Pune,

by a car posing themselves as C.B.I. Officers. As it was represented that they were C.B.I. Officers the Watchman opened the gate when four persons came out of the car. The allegation is that the said four persons entered the cabin in the factory premises and asked the persons present there as to where the cash was kept. They checked the drawers in the cabin. The accused assaulted the first informant Amol Manohar Chavan who claims to be the Manager of the company and one more person. The allegation is that one of the four persons was carrying a sword. The case made out in the F.I.R. is that the first informant tried to save himself by throwing a stick as a result of which the Applicant Darshan suffered a head injury. The case is that Darshan and two others were caught by the employees of the company and the Police were called. The case made out is that Ashish run away by jumping over the compound wall.

2. Shri Joshi appearing for both the Applicants submitted that the Applicant Darshan was seriously wounded and was admitted in Hospital and was discharged only on 17th May 2005. He relies on the certificate issued by Surya Hospitals Pvt.Ltd. He submitted that the Applicant Darshan himself filed a complaint in writing on 23rd April 2005 against 9 persons for assault. He submitted that in the said complaint Darshan has not named the other Applicant Ashish though

he has disclosed the names of two other persons accompanying him in the car. He submitted that there is no material against the Applicant Ashish. He submitted that height of the compound wall of the premises of the company is 15 feet and therefore, it is impossible for anyone to jump over the wall. He submitted that the Applicant Ashish was not accompanying Darshan and his name is not disclosed in the complaint filed by Darshan. He submitted that no action has been taken by the Police against the persons who are named in the complaint filed by the Applicant Darshan. He submitted that none of the Applicants were carrying any weapon and it is notthe allegation that they have committed any theft or they have taken any cash from the premises of the company. He submitted that the maximum injuries are on the person of Darshan. He submitted that the Applicant Darshan is still under medical treatment. He submitted that considering the allegations made there is no need for custodial interrogation.

3. The learned A.P.P. has brought to my notice the statements of various witnesses recorded during the course of investigation and he submitted that the custodial interrogation was necessary considering the allegations made against the Applicants.

4. In so far as the Applicant Darshan is concerned in his complaint itself he has stated that he and two

others accompanying him had visited the factory premises to conduct a raid on the said Petrochemical factory and therefore, at 1.00 a.m. in the night they came near the factory premises. Two other cars also came there and certain persons got down from the car and assaulted him.

5. It is the case of the prosecution that in the F.I.R. that the Applicant Darshan along with three others entered the premises of the Company and claimed that they were representing the C.B.I. F.I.R. discloses that the Applicant Darshan was arrested in the premises of the said Petrochemical company. In the complaint filed by Darshan himself, he has disclosed his intention to conduct a raid in the factory premises. The F.I.R. discloses that he was found inside the factory premises. The Apex Court in the case reported in (2003) 8 S.C.C. page 77 (Bharat Choudhary v/s. State of Bihar) held that the only factors to be taken into consideration for grant of anticipatory bail are the gravity of the offence and the need for custodial interrogation. Considering the allegation in the F.I.R. against both the Applicants it cannot be disputed that the allegation is of very serious nature in the sense that the Applicants were posing themselves as C.B.I. Officers and they entered the factory premises. As stated earlier the case of the prosecution is that the Applicant Darshan was caught in the factory premises itself and Ashish ran away. Considering the serious

nature of the allegations and the gravity of the allegations, in my opinion, this is a case where custodial interrogation is required. The Apex Court has held in a decision reported in (1997) 7 S.C.C. 187 (State v/s. Anil Sharma) that the custodial interrogation is qualitatively more elicitation-oriented than questioning a suspect who is well ensconced with a favourable order under section 438 of the Code of Criminal Procedure, 1973.

6. Merely because name of the Applicant Ashish is not mentioned in the cross complaint filed by Darshan the gravity of the allegation is not affected. Ashish is named in the F.I.R. In my opinion no case is made out for grant of anticipatory bail.

7. In so far as Darshan is concerned, the injury certificate is on record. He has suffered a fracture of right frontal bone and fracture of first metacarpo phalangil joint and first meta carpal bone and was hospitalised till 17th May 2005. Therefore, reasonable time needs to be granted to the Applicant Darshan to surrender. Considering the fact that the Applicant Darshan was in hospital for a period of a month, time of three weeks deserves to be granted to him to surrender to the Investigating officer.

8. Hence the Applications are rejected. However, the

Applicant Darshan in Criminal Application No.3206 of 2005 is granted time of three weeks to surrender to the Investigating Officer. At the request of Shri Joshi, the Applicant Ashish in Criminal Application No.3205 of 2005 is granted time of 7 days to surrender to the Investigating officer.

9. It is obvious that the observations which are made in this order are only for limited purpose of considering the prayer for grant of anticipatory bail.

Judge.